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**FLORIDA WATER DISTRICT FILES BRIEF
WITH U.S. SUPREME COURT**

Progress On Everglades Restoration, National Application At Stake

WASHINGTON, D.C. – The U.S. Supreme Court, which has agreed to hear a case that is vital to environmental protection and to restoring the fragile Florida Everglades, learned today that an overreaching new interpretation of federal clean-water laws could severely delay the complex Everglades Restoration effort.

In a brief to be filed tomorrow with the nation's highest court, the public agency implementing the comprehensive, Congressionally mandated Everglades Restoration program – the South Florida Water Management District (SFWMD) – said that a lower federal court's misinterpretation of the law could add barriers to environmental protection of the Everglades, and could substantially increase the regulatory burden and cost for public water management agencies across the country.

“We’re already well on the way to cleaning up the Everglades. Yet today’s progress could be diverted – or even reversed – if the law is wrongly applied, and if new procedures are added to existing regulations,” said Nicolas Gutierrez, the chairman of the water district, which is an agency of the State of Florida. “Unless the lower court’s misreading of the law is overturned, there will be serious national consequences for the environment and the economy. Taxpayers everywhere would face vastly higher costs – and public water management agencies nationwide would face drastically more complicated tasks if the Supreme Court approves this form of over-regulation.”

Supporting South Florida's case against a new and overreaching interpretation of the federal Clean Water Act, a broad coalition with dozens of members – including cities, states, attorneys general, water management agencies, and associations and advocacy groups from around the nation – are expected to file *amicus curiae* briefs this week with the U.S. Supreme Court.

The case now before the U.S. Supreme Court – *South Florida Water Management District vs. Miccosukee Tribe of Indians* – concerns the interpretation of a specific section of the federal Clean Water Act of 1975. Two lower federal courts decided the case in favor of the Miccosukee Tribe. The water district's appeal asks the justices to return to the traditional interpretation of the federal Clean Water Act.

“As a public agency, we always comply with environmental regulations that apply to us as a public entity. Environmental protection is our legal mandate and our highest priority,” said Sheryl Wood, General Counsel of SFWMD. “But this section of the law was never envisioned by Congress to apply to public water-management agencies who supply drinking water and restrain floodwaters. Clearly, Congress intended this part of the law to apply to industrial polluters who add dangerous pollutants to the nation's water. The lower federal courts simply misread and misapplied this section of the law.”

“If we win this case, the real winner will be our nation's environment, which will enjoy a faster and more effective cleanup,” said Gutierrez. “But if we lose this case, the real losers will be the nation's taxpayers, who will see their scarce resources frittered away on needless bureaucratic paperwork instead of practical measures that protect our environment.”

SFWMD is implementing a comprehensive long-term plan to restore the Everglades and protect the environment of South Florida. The Everglades Restoration plan – enacted by Congress through the Comprehensive Everglades Restoration Plan (CERP) – is the largest ecosystem restoration project in the world and is one of the most complex environmental protection programs ever undertaken.

The case before the U.S. Supreme Court focuses on the permitting of a single pumping station – called “S-9” – within the Everglades in western Broward County, Florida. “We deeply regret that the Miccosukee Tribe has

made this dispute an impediment to the Everglades Restoration process,” said Gutierrez.

The Miccosukee Tribe asserts that, under the federal Clean Water Act, SFWMD should be required to obtain a federal National Pollutant Discharge Elimination System (NPDES) permit in order to transfer water from a canal, called the C-11 basin, to Water Conservation Area (WCA) 3A in western Broward County. The S-9 pumping station already has been permitted by the state and is required to meet state water quality standards.

Lower federal courts have held that an NPDES permit is required for the District to move water in the areas in question. Those lower courts, according to SFWMD, misinterpreted the intent of Congress in framing the law, and failed to understand the restrictions that an NPDES permit would place on Everglades Restoration. The U.S. Supreme Court, recognizing the importance of the legal principles at stake, agreed with SFWMD that the case is of national importance and should be heard.

Today, SFWMD moves water from the C-11 canal through a levee into WCA 3A in an effort to offer flood protection and to protect the water supply for the residents of South Florida. The Miccosukee Tribe argues that SFWMD is a “polluter” when, in fact, SFWMD merely moves water within the Everglades, adding no pollutants to the water. Under the Clean Water Act, SFWMD and its coalition of supporters argue that Congress intended that an NPDES permit should be required only to regulate those who add pollutants to the water, requiring them to clean the water to the acceptable minimum standard. In this case, SFWMD and its supporters are aiming to prevent the misapplication of such a permit to public entities’ water management activities.

The water in the C-11 basin contains relatively low levels of phosphorus – measuring about 20 parts per billion – that largely come from residential and commercial properties within the C-11 basin. SFWMD is not violating any regulatory requirement of the federal Clean Water Act by moving water for purposes intended to serve the public good.

Addressing the level of pollution in Everglades water is the job of the State of Florida, the SFWMD and the United States Army Corps of Engineers. Water quality is an important part of the Everglades Restoration plan. Those water-quality standards will be met without an NPDES permit.

Moreover, the C-11 basin and the WCA 3A are both parts of the singular Everglades ecosystem. The NPDES permit process would dramatically slow Everglades Restoration, increasing the restoration costs and prolonging the restoration process by years.

The Everglades will be restored, as directed by Congress through CERP. But the NPDES process would add no environmental benefit amid this complex process.

More than 20 national and regional groups are now supporting SFWMD's position before the U.S. Supreme Court. SFWMD anticipates that more supporters will agree with its position as public awareness of the case increases, and as the severely negative impact of the lower courts' decision is more widely understood.

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